

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC.,

No. C 08-4571 MMC

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART ENVIRONMENTAL
RESOLUTIONS, INC. AND CARDNO
USA'S MOTIONS TO DISMISS**

v.

CITY OF EUREKA, et al.,

Defendant.

And Related Counterclaims, Cross-claims,
and Third-Party Claims.

Before the Court are two motions, filed September 27, 2012, by Environmental Resolutions, Inc. and Cardno USA (collectively, "ERI"): (1) "Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment as to Claims of Plaintiff KFD Enterprises;" and (2) "Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, as to Cross-Claims of City of Eureka, Unocal, Union Oil, Chevron, and Winzler & Kelly."¹ The matter came on regularly for hearing November 16, 2012. George A. Acero of Gordon & Rees LLP appeared on behalf of ERI. Jan A. Greben of

¹ ERI subsequently withdrew the motion as to Chevron Corporation, which has asserted no claim against ERI. (See Doc. No. 568.)

1 Greben & Associates appeared on behalf of KFD Enterprises, Inc. ("KFD"). Charles
2 Bolcom of Davidovitz & Bennett LLP appeared on behalf of the City of Eureka. Andrew T.
3 Mortl of Glynn & Finley LLP appeared on behalf of Union Oil Company of California,
4 Chevron Corporation, and Unocal Corporation. Peter C. Lyon of Severson & Werson
5 appeared on behalf of Winzler & Kelly. Having read and considered the parties' respective
6 written submissions and having considered the arguments of counsel, the Court, for the
7 reasons stated on the record at the hearing, rules as follows.

8 1. With respect to KFD, ERI's motion for summary judgment is hereby GRANTED in
9 part and DENIED in part:

10 a. To the extent the motion seeks summary judgment on KFD's claim of
11 continuing trespass, alleged in the Tenth Claim for Relief, the motion is GRANTED.

12 b. In all other respects, the motion is DENIED.

13 2. With respect to the City of Eureka, Unocal, Union Oil, and Winzler & Kelly, ERI's
14 motion for summary judgment is hereby GRANTED in part and DENIED in part:

15 a. To the extent the motion seeks summary judgment on the City of Eureka's
16 claims brought under CERCLA and HSAA on the basis of ERI's alleged liability as an
17 "owner," alleged in the City of Eureka's First through Fifth Claims for Relief, the motion is
18 GRANTED.

19 b. In all other respects, the motion is DENIED.

20 **IT IS SO ORDERED.**

21 Dated: November 16, 2012

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23 MAXINE M. CHESNEY
24 United States District Judge
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